

**IN THE CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE**

STATE OF TENNESSEE,)	
)	
Petitioner,)	
)	
v.)	No. _____
)	
ATKINS AND COMPANY, a Tennessee)	
partnership,)	
Respondent.)	

ASSURANCE OF VOLUNTARY COMPLIANCE

THIS ASSURANCE OF VOLUNTARY COMPLIANCE is given by ATKINS AND COMPANY, a Tennessee partnership, located in Luttrell, Tennessee to PAUL G. SUMMERS, Attorney General and Reporter for the State of Tennessee and DAVE MCCOLLUM, the Director of the Division of Consumer Affairs of the Department of Commerce and Insurance.

DEFINITIONS

As used in this Assurance and accompanying Agreed Order, the following words or terms shall have the following meanings:

- A. “Assurance of Voluntary Compliance” or “Assurance” shall refer to this document entitled Assurance of Voluntary Compliance in the matter of *State of Tennessee v. Atkins and Company, a Tennessee partnership*.
- B. “Consumer” means any person, a natural person, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.
- C. “Division” or “Division of Consumer Affairs” shall refer to the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance.
- D. “Respondent” shall refer to Atkins and Company, owners Judy A. Tolliver and Tracy L. Atkins and any and all officers, employees, agents, and representatives of Atkins and Company.
- E. “Petitioner,” “State of Tennessee,” or “Attorney General” shall refer to the Tennessee Attorney General & Reporter and the Office of the Tennessee Attorney General.

- F. “Tennessee Consumer Protection Act” or “Consumer Act” shall refer to the Tennessee Consumer Protection Act of 1977 and related statutes found at Tenn. Code Ann. §§ 47-18-101, *et seq.*
- G. “Tennessee Unauthorized Practice of Law statute” or “UPL Act” shall refer to the Unauthorized Practice and Improper Conduct statute and related statutes found at Tenn. Code Ann. §§ 23-3-101, *et seq.*

WITNESSETH:

Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

A. The Attorney General in conjunction with the Division conducted an investigation of specific business practices of the Respondent. These practices by the Respondent include: (1) advertising preparation of “wills”; (2) agreeing to perform services for Tennessee consumers which constitute law business or the practice of law and accepting payment for these services; (3) informing test shoppers posing as Tennessee consumers that it would prepare wills for a fee; and (4) engaging in law business or the practice of law by preparing documents for Tennessee consumers when Respondent does not employ an attorney licensed to practice law in the State of Tennessee. Respondent’s business practices are more fully described in the State’s Petition. As a result of the investigation, the Division and the Attorney General determined that certain acts and practices of the Respondent violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.* and the Tennessee Unauthorized Practice and Improper Conduct statute, Tenn. Code Ann. § 23-3-101, *et seq.*

B. Respondent neither admits nor denies any wrongdoing. Further, pursuant to Tenn. Code Ann. § 47-18-107(c), acceptance of this Assurance by Respondent shall not be considered an admission of a prior violation of the Act.

C. Therefore, pursuant to Tenn. Code Ann. § 47-18-107, Respondent desires to give this Assurance, and the Attorney General desires to accept it, in order to avoid the expense of litigation.

NOW, THEREFORE, acting pursuant to Tenn. Code Ann. § 47-18-107, Respondent gives and the Attorney General accepts the following assurances:

I. JURISDICTION

1.1 Jurisdiction of this Court over the subject matter herein and over the person of the Respondent for the purposes of entering into and enforcing this Assurance and Agreed Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply for such further orders and directions as may be necessary or appropriate for the construction, modification, or execution of this Assurance and Agreed Order, including enforcement of compliance therewith and assessment of penalties for violations thereof. Respondent agrees to pay all court costs and reasonable attorneys' fees and any costs associated with any successful petitions to enforce any provision of this Assurance and Agreed Order against Respondent.

II. VENUE

2.1 Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Assurance is solely in the Circuit Court of Davidson County, Tennessee.

III. PERMANENT INJUNCTION

Accordingly, it is hereby agreed that upon approval of the Court, Respondent shall be permanently and forever enjoined and bound from engaging in the practices set forth herein:

A. Unauthorized Practice of Law

3.1 Respondent shall be strictly prohibited from directly or indirectly engaging in the practice of law or law business in the State of Tennessee found in Tenn. Code Ann. § 23-3-101(1) and (2);

3.2 Respondent is strictly prohibited from directly or indirectly engaging in any act or practice in the conduct of its business that violates Tenn. Code Ann. §§ 23-3-101, *et seq.* relating to the unauthorized practice of law;

3.3 Respondent and its employees that do not possess a valid State of Tennessee law license shall be strictly prohibited from providing legal advice to Tennessee consumers;

3.4 Respondent and its employees that do not possess a valid State of Tennessee law license shall be strictly prohibited from preparing legal documents such as, but not limited to, wills, to Tennessee consumers;

3.5 Respondent shall not appear in any court in the State of Tennessee representing any person or business;

3.6 Respondent shall not make or prepare any filings for any court in the State of Tennessee on behalf of any person or business;

B. Consumer Protection Act

3.7 Respondent shall be prohibited from directly or indirectly engaging in any misleading, unfair, or deceptive acts or practices in the conduct of its business. Respondent shall fully comply with all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.*, including but not limited to §§ 47-18-104(a) and (b)(27), which prohibits unfair and deceptive acts and practices;

3.8 Respondent shall be prohibited from directly or indirectly using terms or phrases such as “legal,” “law,” “legal services,” “legal aide,” or the like that would indicate to Tennessee consumers that the Respondent is providing legal services in the State of Tennessee;

3.9 Respondent shall be prohibited directly or indirectly from making any representations to consumers that a transaction confers or involves rights, remedies, or obligations that it does not have or involve or which are prohibited by law, in violation of Tenn. Code Ann. § 47-18-104(b)(12);

3.10 Respondent is strictly prohibited from making incorrect, false, misleading, or deceptive statements when attempting to collect money from Tennessee consumers;

3.11 Respondent shall not directly or indirectly represent, state, promote, claim, advertise, or imply that Respondent will provide goods or services to consumers which Respondent is prohibited by law from providing to Tennessee consumers;

3.12 Respondent shall not directly or indirectly cause the likelihood of confusion or misunderstanding as to the source, sponsorship, approval, or certification of its goods or services, in violation of Tenn. Code Ann. § 47-18-104(b)(2);

C. Consumer Protection Act and Unauthorized Practice of Law

3.13 Respondent is strictly prohibited from directly or indirectly representing, stating, implying, promoting, or advertising in Tennessee that Atkins and Company or any employee of Atkins and Company is an “Attorney At Law,” “Attorney,” “Lawyer,” or “legal” or using any term or phrase of similar import, unless that person possesses a current license to practice law in the State of Tennessee;

3.14 Respondent shall not directly or indirectly represent, state, promote, advertise, claim or imply that Respondent can provide “legal services” for Tennessee consumers, such as, but not limited to, “wills” or term or phrase of similar import, if Respondent’s employee preparing the document does not possess a valid license to practice law in the State of Tennessee at the time of promoting, offering, and providing the services;

IV. RESTITUTION

4.1 Based upon knowledge and belief, Respondent state that the persons and entities listed in Exhibit A received services or paid to receive services from the Respondent.

4.2 Respondent shall provide separate checks written on Respondent’s attorney’s escrow account for each Tennessee consumer listed in Exhibit A, refunding the amount of money paid by that particular Tennessee consumer for services received from Respondent. The checks shall be made payable to each particular Tennessee consumer. Respondent shall also provide with the check a copy of the attached letter (Exhibit B) to each Tennessee consumer listed in Exhibit A. This letter along with the refund check shall be provided by First Class U.S. Mail to each Tennessee consumer listed in Exhibit A. The mailing will be sent to each consumer ’s last known address. A copy of the letter and check shall be forwarded to the State on the day that the letter and check are sent to each Tennessee consumer listed in Exhibit A.

4.3 In the event any additional Tennessee consumers come forward after entry of this Assurance alleging that the consumer paid money to the Respondent for services, Respondent shall be required to provide restitution to that Tennessee consumer within ten (10) days. Restitution shall be paid by providing a check written on Respondent’s attorney’s escrow account made payable to that particular consumer in the amount paid by the additional Tennessee consumer(s). Respondent shall also provide with the check a copy of the attached letter (Exhibit B) to the consumer. The letter along with the refund check shall be provided by First Class U.S. Mail to the consumer. A copy of the letter and check shall be forwarded to the State on the day that the letter and check are sent to the consumer.

4.4 Respondent shall pay all costs associated with the restitution process set forth herein.

- 4.5 Within six (6) months of entry of this Assurance and Order, Respondent shall file with the Attorney General the following information and shall supplement the information as is necessary:
- a. A report verifying and certifying that eligible consumers who have requested restitution have, in fact, received a full refund. Additionally, the Respondent shall verify and certify compliance with each provision of this Assurance of Voluntary Compliance and Agreed Order with respect to restitution.
 - b. An alphabetical list of the name and address of each consumer who requested restitution, the amount of each consumer's refund, and the total amount of all refunds provided.

4.6 Within ten (10) days of receipt of a request from the Division of Consumer Affairs for evidence that a specific consumer or consumers have received restitution, Respondent shall provide any documents, books, and/or records necessary to establish to the satisfaction of the Director of the Division of Consumer Affairs that the restitution process complied with this Assurance and Agreed Order. These documents may include, but shall not be limited to, copies of the front and back of canceled checks used to provide restitution to consumers and records reflecting the identity of consumers that paid Respondent for services and the amounts those consumers paid the Respondent. The documents, books, or records shall be physically turned over and provided to the Division of Consumer Affairs' office no later than ten (10) days from receipt of such request. This paragraph shall in no way limit the Attorney General's or the Division of Consumer Affairs' right to obtain documents, records, and/or testimony through any other state or federal law, regulation, or rule.

4.7 In the event Respondent is unable to locate consumers listed in Exhibit A or consumers not listed in Exhibit A who requested a refund, those funds due such consumers shall be treated as unclaimed property in the possession of the State of Tennessee pursuant to the Uniform Disposition of Unclaimed Property Act, Tenn. Code Ann. § 66-29-101, *et seq.* These funds may be delivered to the Treasurer prior to the statutory due date. The Respondent shall provide all information necessary to the State Treasurer's office to appropriately handle such funds as unclaimed property as set forth by statute and regulation.

V. PAYMENT OF ATTORNEYS' FEES AND COSTS TO THE STATE

5.1 Pursuant to Tenn. Code Ann. § 47-18-108(b)(4) and § 23-3-103(c)(1), Respondent shall pay the sum of One Thousand and Five Hundred Dollars (\$1,500.00) to the State of Tennessee for attorneys' fees and costs of investigation, prosecution, and monitoring for compliance of this matter, which may be used for consumer protection purposes or unauthorized practice of law purposes at the sole discretion of the Attorney General. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee-Attorney General Attorneys' Fees" on the day of execution of this Assurance.

VI. TENNESSEE CONSUMER PROTECTION ACT CIVIL PENALTIES

6.1 Respondent shall pay the sum of Three Thousand Dollars (\$3,000.00) to the State of Tennessee as a civil penalty pursuant to Tenn. Code Ann. § 47-18-108(b)(3). Said payment shall be made as set forth in paragraph 8.

VII. UNAUTHORIZED PRACTICE OF LAW ACT CIVIL PENALTIES

7.1 Respondent shall pay the sum of Three Thousand Dollars (\$3,000.00) to the State of Tennessee as a civil penalty pursuant to Tenn. Code Ann. § 23-3-103(c)(1). Said payment shall be made as set forth in paragraph 8.

VIII. FORBEARANCE ON EXECUTION AND DEFAULT

8.1 No execution or garnishment on the monetary portion of this Assurance and Agreed Order shall issue so long as the Respondent makes payment in accordance with paragraphs 8.2 and 8.3 herein. In the event Respondent fails to make any such payment within twenty (20) days of its due date, the entire monetary balances under this Assurance and Agreed Order then remaining becomes due and payable without notice and may be collected by execution, garnishment or other legal process, together with interest pursuant to Tenn. Code Ann. § 47-14-121 from the date of entry of this Assurance and Agreed Order. Respondent agrees to pay all attorneys' fees and costs, including but not limited to court costs, associated with any such collection efforts.

8.2 Payments required in paragraph 5.1 of this Assurance shall be made to the Consumer Advocate and Protection Division, Office of Attorney General as follows: \$100.00 due the first day of the month immediately following the final payment to consumers as set forth in paragraph 8.2 of this Assurance. \$100.00 shall be paid on the first day of each month thereafter until the entire amount has been paid. All payments shall be certified or cashiers checks made payable to the “State of Tennessee-Attorney General.”

8.3 Payments required in paragraphs 6.1 and 7.1 of this Assurance shall be made to the Consumer Advocate and Protection Division, Office of Attorney General as follows: the entire amount will be due upon motion by the State that the Respondent has violated this Assurance in any way. If the State has a reason to believe that a violation of this Assurance has occurred, the State may move that the Respondent pay penalties as set forth in this Assurance. No payment of this part must be made until the State has a reason to believe that there has been a violation of this Assurance. The payments shall be certified or cashiers checks made payable to the “State of Tennessee-Attorney General”. In the event any partial payment is made, the payments shall first be applied to the Attorney General’s attorneys’ fees and costs and once that obligation is complete payments shall be applied to the civil penalties.

8.4 Respondent shall be required to retain proof of all payments to the State of Tennessee in the form of canceled checks for each payment for a full two (2) years following their final payment to the State. Respondent shall provide proof of all payments to the State within ten (10) days of a request for such information.

8.5 On the day of entry of this Assurance, Respondent shall provide the State with a current address and telephone number where it/he/she can be contacted and served with process in the event of default until the monetary portions of this Assurance and Agreed Order is completed. Respondent shall further be required to provide any new address and telephone number within two (2) days of relocating to a new address or of obtaining a new telephone number. Service upon the Respondent for the purposes of enforcing the monetary portion of this Assurance in the event of default shall be effective upon mailing a notice via certified mail return

receipt requested and waiting 30 days, if no response is received the State may obtain a default judgment or other adverse ruling sought by the State.

8.6 Respondent agrees that if Respondent defaults on any monetary payment herein the State may set aside this Assurance and obtain a judgment including full restitution for all consumers including statutory interest and the full amount of civil penalties and other remedies that would have been available to the State prior to entry of this Assurance.

8.7 The Respondent is providing a sworn statement to the Attorney General which will be available for use by the State if the Respondent defaults under any of the monetary payment provisions of this Assurance. Upon default, this sworn statement becomes a part of this Assurance.

8.8 Respondent agrees that any restitution payments required under this Assurance are priority claims under 11 U.S.C. § 507 (a)(6).

8.9 In the event of default of any monetary provision of this Assurance or any substantive proceeding based upon the monetary amount, Respondent agrees that all statements set forth in the State's Petition shall be deemed to be admitted for the limited purpose of establishing non-dischargeability of all sums paid hereunder. Specifically, Respondent agrees that all sums are nondischargeable under 11 U.S.C. § 532(a)(2). Respondent further agrees that in any subsequent proceeding based upon the monetary amount set forth in this Assurance, Respondent shall not contest the State's right to obtain the full amount due and owing, shall reaffirm any such debt if necessary in order to completely fulfill Respondent's monetary obligations to the State and shall not object in any manner or form that is contradictory to the terms of this Assurance to any proof of claim filed by the State.

8.10 Respondent agrees that any and all such sums payable under this Assurance are non-dischargeable in a bankruptcy case. Respondent agrees that the sworn statement executed pursuant to paragraph 8.7 becomes a part of this Assurance upon the filing of a bankruptcy and that it binds the Respondent in a bankruptcy case.

8.11 Respondent has represented and warranted that it has reviewed its financial situation and that:

- (a) it currently is solvent within the meaning of 11 U.S.C. § 547(b)(3), and will remain solvent following its payment to the State of Tennessee hereunder. Further, the parties expressly warrant that in evaluating whether to execute this agreement, the Parties have:
 - (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Respondent, within the meaning of 11 U.S.C. § 547(b)(1), and
 - (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange; and
- (b) the following are correct statements:
 - (i) the debtor was not insolvent within the meaning of 11 U.S.C. § 548(a)(1)(B)(ii) on the date of these promises, covenants and obligations and did not become insolvent within the meaning of that section as a result of these promises, covenants and obligations; and
 - (ii) the Respondent is receiving reasonably equivalent value, so as to take these promises, covenants and obligations outside the purview of 11 U.S. C. § 548 (a)(1)(B)(i).

8.12 Respondent shall give written notice of any bankruptcy filing to:

Deputy Attorney General and
Consumer Protection Division
Tennessee Attorney General's Office
P.O. Box 20207
Nashville, TN 37202

Division of Consumer Affairs
c/o TN Attorney General's Office,
Bankruptcy Unit
P.O. Box 20207
Nashville, TN 37202

8.13 Without limiting the scope of paragraph 8.1, upon default of any monetary provision of this Assurance, Respondent agrees to provide testimony under oath for the purposes of determining Respondent's financial status and to locate any assets available to the State for execution and seizure to fulfill the Respondent's monetary obligations under this Assurance. Respondent shall be required to pay all costs associated with court reporting and transcription of such sworn statements. Respondent also agrees within five (5) business days to provide written sworn responses to the State's request for documents or other information in the event of default.

IV. MONITORING AND COMPLIANCE

9.1 Upon request, Respondent agrees to provide books, records and documents to the State at any time, and further, to informally or formally under oath, provide testimony and other information to the State relating to compliance with this Assurance. Respondent shall make any requested information available within one (1) week of the request, at the Office of the Attorney General, Consumer Advocate and Protection Division, 425 Fifth Avenue North, Nashville, Tennessee 37243, or at any other location within the State of Tennessee that is mutually agreeable in writing to Respondent and the Attorney General. This section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

9.2 The State of Tennessee has the right to test shop Respondent for the purpose of confirming compliance with this Assurance and state law. The test shoppers are not required to disclose that they are representatives of the State of Tennessee when making contact with Respondent. Further, the State of Tennessee may record any or all aspects of its solicitations or visit(s) with Respondent in audio or video form without notice to Respondent. The Respondent agrees to void any sale that is commenced by a test shopper at the conclusion of the sale upon notification that it was test shopping conducted by the State.

X. PRIVATE RIGHT OF ACTION

10.1 Pursuant to TENN. CODE ANN. §§ 47-18-109 and 47-18-107(e), nothing in this Assurance shall be construed to affect any private right of action that a consumer/person may hold against Respondent.

XI. PENALTY FOR FAILURE TO COMPLY

11.1 Pursuant to TENN. CODE ANN. § 47-18-107(c), Respondent understands that upon execution and filing of this Assurance, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act.

11.2 Pursuant to TENN. CODE ANN. § 47-18-107(f), Respondent understands that any knowing violation of the terms of this Assurance shall be punishable by civil penalties of not more than Two Thousand Dollars (\$2,000.00) for each violation, in addition to any other appropriate

penalties and sanctions, including but not limited to contempt sanctions and the imposition of attorneys' fees and costs. Respondent agrees to pay all court costs and attorneys' fees associated with any petitions to enforce this Assurance and Order against the Respondent.

11.3 Pursuant to Tenn. Code Ann. § 23-3-103(c)(4), any knowing violation of the terms of this Order shall be punishable by a civil penalty of not more than Two Thousand Dollars (\$2,000.00) per violation, in addition to any other appropriate relief, including but not limited to, contempt sanctions and the imposition of attorneys' fees and civil penalties.

XII. REPRESENTATIONS AND WARRANTIES

12.1 Respondent represents and warrants that the execution and delivery of this Assurance is its free and voluntary act, that this Assurance is the result of good faith negotiations, and that Respondent agrees that the Assurance and terms hereof are fair and reasonable. The parties warrant that they will implement the terms of this Assurance in good faith. Further, no offer, agreements, or inducements of any nature whatsoever have been made to it by the State of Tennessee, its attorneys or any employee of the Attorney General's Office or the Division of Consumer Affairs to procure this Assurance.

12.2 Respondent represents that signatories to this Assurance have authority to act for and bind the Respondent.

12.3 Respondent will not participate directly or indirectly in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

12.4 Neither Respondent nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance, or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Respondent.

12.5 Acceptance of this Assurance by the State shall not be deemed approval by the State of any of Respondent's advertising or other business practices.

12.6 Within thirty (30) days of the entry of this Assurance, Respondent shall submit a copy of this Assurance to each of its officers, directors, employees and any third parties who act directly or indirectly on behalf of the Respondent as an agent, independent contractor or who are involved in conducting business in the State of Tennessee. Within forty-five (45) days of entry of this Assurance, Respondent shall provide the State with an affidavit verifying and certifying that all required persons have been supplied with a copy of this Assurance.

12.7 Respondent warrants and represents that Atkins and Company is the proper party to this Assurance and Order. Respondent further acknowledges that the State expressly relies upon this representation and warranty, and that if it is false, misleading, deceptive, unfair or inaccurate, the State has the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondent be held in contempt, if the State so elects.

12.8 Atkins and Company represents that it is the true legal name of the entity entering into this Assurance of Voluntary Compliance and Agreed Order. Respondent understands that the State expressly relies upon this representation and if this representation is false, unfair, deceptive, inaccurate or misleading, the State shall have the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondent be held in contempt, if the State so elects.

12.9 This Assurance and Agreed Order may only be enforced by the parties hereto.

12.10 The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

12.11 This document shall not be construed against the “drafter” because both parties participated in the drafting of this document.

12.12 This Assurance and Agreed Order constitutes the complete agreement of the parties with regard to the resolution of the matters set forth in the State’s Petition. This Assurance is limited to resolving only matters set forth in the State’s Petition.

12.13 Nothing in this Assurance shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Assurance shall not bar the State, the Motor Vehicle Commission or other governmental entity from enforcing laws, regulations or rules against Respondent.

12.14 This Assurance shall be binding and effective against Respondent upon Respondent's execution of the Assurance. In the event the court does not approve this Assurance, this Judgment shall be of no force and effect against the State of Tennessee.

12.15 Nothing in this Assurance constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

12.16 Respondent waives and will not assert any defenses Respondent may have to any criminal prosecution or administrative action relating to the conduct described in the State's Petition, which defenses may be based, in whole or in part, on the Double Jeopardy or Excessive Fines Clauses of the Constitution or principles set forth in *Hudson v. United States*, 118 S. Ct. 488 (1997), and *Austin v. United States*, 509 U.S. 602 (1993), and agrees that the amount that Respondent has agreed to pay under the terms of this Assurance is not punitive in effect or nature for purposes of such criminal prosecution or administrative action.

12.17 No waiver, modification, or amendment of the terms of this Assurance shall be valid or binding unless made in writing, signed by the party to be charged, approved by this Honorable Court and then only to the extent set forth in such written waiver, modification or amendment.

12.18 Any failure by any party to this Order to insist upon the strict performance by any other party of any of the provisions of this Assurance and Agreed Order shall not be deemed a waiver of any of the provisions of this Assurance and Agreed Order, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Assurance and Agreed Order and the imposition of any

implicable penalties, including but not limited to contempt, civil penalties and/or the payment of attorneys fees to the State.

12.19 If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance and this Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not be contained herein.

XIII. COMPLIANCE WITH ALL LAWS, REGULATIONS AND RULES

13.1 Nothing in this Assurance and Order shall be construed as relieving Respondent of the obligation to comply with all state and federal laws, regulations and rules.

XIV. FILING OF ASSURANCE

14.1 Upon the execution of this Assurance, the Attorney General shall prepare and file in the Circuit Court for Davidson County a Petition, Agreed Order and this Assurance for the Court's approval. Respondent hereby waives any and all rights which it may have to be heard in connection with judicial proceedings upon the Petition. Respondent agrees to pay all costs of filing such Petition, Assurance and Agreed Order. Simultaneously with the execution of this Assurance, Respondent shall execute an Agreed Order. This Assurance is made a part of and is incorporated into the Agreed Order. The Respondent agrees that it consents to the entry of this Assurance and Agreed Order without further notice.

XV. APPLICABILITY OF ASSURANCE TO RESPONDENT AND ITS SUCCESSORS

15.1 Respondent Atkins and Company agrees that the duties, responsibilities, burdens and obligations undertaken in connection with this Assurance shall apply to it and each of the directors, managers, agents, assigns, representatives, employees, partners Judy A. Tolliver and Tracy L. Atkins, subsidiaries, affiliates, parents, related entities, joint venturers, persons or other entities it controls, manages, or operates, its successors and assigns, and to other persons or entities acting directly or indirectly on its behalf.

XVI. NOTIFICATION TO STATE

16.1 Any notices required by this Assurance shall be sent Certified Mail - Return Receipt Requested, by United States Mail or by any other nationally recognized courier service that provides tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the State:

Dana M. Ausbrooks
Assistant Attorney General
Office of the Attorney General 576 Tazewell Pike
Consumer Advocate and
Protection Division
P.O. Box 20207
Nashville, Tennessee 37202
(615) 532-5512

For the Respondent:

Judy A. Tolliver and Tracy L. Atkins
Atkins and Company
Luttrell, Tennessee 37779
(865) 992-5304

Additionally, the Respondent will provide the State with any changes of address ten (10) days prior to any change of address becoming effective.

16.2 For five (5) years following execution of this Assurance, Respondent shall notify the Office of the Attorney General, c/o Consumer Advocate and Protection Division, P.O. Box 20207, Nashville, Tennessee 37202, in writing, at least thirty (30) days prior to the effective date of any proposed changes in its business structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution of subsidiaries, or any other changes in Respondent's status that may effect compliance with obligations arising out of this Assurance.

XVII. COURT COSTS

17.1 All costs associated with the filing and distribution of this Assurance and any other incidental costs or expenses incurred thereby shall be borne by Respondent. No costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State.

FOR THE STATE OF TENNESSEE:

PAUL G. SUMMERS
Attorney General & Reporter
B.P.R. No. 6285

CYNTHIA E. KINSER
Deputy Attorney General
B.P.R. No. 13533

DANA M. AUSBROOKS
Assistant Attorney General
B.P.R. No. 20625
Tennessee Attorney General's Office
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202
(615) 532-5512

Approved by:

DAVID A. MCCOLLUM
Director
The Division of Consumer Affairs of the
Department of Commerce and Insurance
500 James Robertson Parkway
5th Floor, Davy Crockett Tower
Nashville, TN 37243-0600
(615) 741-4737

FOR THE RESPONDENT:

JUDY A. TOLLIVER
Owner
Atkins and Company
576 Tazewell Pike
Luttrell, Tennessee 37779
Social Security No.: _____
Telephone No.: (865) 992-5304

TRACY L. ATKINS
Owner
Atkins and Company
576 Tazewell Pike
Luttrell, Tennessee 37779
Social Security No.: _____
Telephone No.: (865) 992-5304

Bill W. Petty
B.P.R. No. _____
O’Connor, Petty, Child and Boswell
6th Floor
603 Main Street
Knoxville, Tennessee 37902

(865) 525-7115
ATTORNEY FOR RESPONDENT

#40289